

TOPICS:

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Phantom Stock

Background:

- Phantom stock is a stock based incentive compensation program.
- An award of phantom stock corresponds to an equivalent number of shares of company stock.
- After a set period of time, the employee will be paid in cash or stock.
- Stock appreciation rights are an interest in the appreciation of company shares.

Reporting requirements:

On Schedule A report the name of the company and that it is a phantom stock plan with its value and income. On Schedule C, Part II report the plan and terms of payout.

Conflicts analysis:

Under 18 U.S.C. § 208, interests in phantom stock should be treated as if the interest is in the company. If the interest meets the requirements for an exemption at 5 CFR 2640, the exemption may be used. If the account is paid out over a period of time after the employee leaves the company, and the interest no longer tracks the company stock but instead becomes a corporate obligation to pay the account balance, then use the "ability or willingness" analysis.

Restricted Stock

Background:

- Restricted stock is company stock issued to employees that can be sold only in the future.
- Employees typically receive dividend payments and voting rights.
- After a certain period of time, usually 3-4 years, the stock vests.
- Restricted stock units are promises to receive shares after the vesting period.

Reporting requirements:

On Schedule A, report the name of the company and that it is restricted stock with its value and income. On Schedule C, Part II, report the plan and its terms.

Conflicts analysis:

If the vesting period is approaching or will occur before the employee enters government, he will have stock in the company. If the employee leaves before the vesting period, the stock will be forfeited.

Exchange Funds

Background:

- These are private investment funds (also known as swap funds) that allow a person to exchange a low-basis stock for a diversified portfolio of stocks.
- There are anywhere from 50 - 499 investors.
- The portfolio may be large-cap, mid-cap, or even like an index fund, but usually there will be at least 20% in real estate.
- These are illiquid funds with investment terms of 7 years or longer.
- Operators of these funds include Eaton Vance, Goldman Sachs, Bessemer Trust, Credit Suisse, Merrill Lynch, and Salomon Smith Barney.

Reporting requirements:

On Schedule A report the complete name of the fund and its value and income. The fund may or may not be an EIF. If it is not, the underlying assets and their values and income must be disclosed.

Conflicts analysis:

Each underlying asset of the fund is attributable to the filer for purposes of 18 U.S.C. 208. These funds do not meet the definition under the exemptions for a "diversified mutual fund" at 5 CFR 2640, and since they are illiquid, options other than divestiture will have to be explored.

Exchange-Traded Funds

Background:

- ETFs are index funds or trusts that are listed on an exchange and, unlike mutual funds, can be traded intra day.
- Investors can buy or sell shares in the collective performance of an entire stock or bond portfolio as a single security.
- Popular ETFs include Standard & Poor's 500 Index Depository Receipts (Spiders or SPDRs), Nasdaq-100 Index Tracking Stock, Diamonds Trust, Total Stock Market Vipers.

Reporting requirements:

On Schedule A report the full name of the fund with its value and income. ETFs are reported as Excepted Investment Funds in the same manner as mutual funds.

Conflicts analysis:

Perform the same 18 U.S.C. 208 conflicts analysis on an ETF as you would for a mutual fund or unit investment trust. Exemptions at 5 CFR 2640 are available.

529 Plans

Background:

- Categorized as prepaid tuition or savings plans, these plans are education savings plans operated by a state or educational institution to help families save for college costs.
- There is at least one type of plan offered by all 50 states.
- Prepaid tuition plans allow the participant to lock in today's tuition rates.
- Prepaid savings plans grow based on the performance of investments chosen by the contributor.

Reporting requirements:

On Schedule A, for prepaid tuition plans, report the name of the plan and the sponsor with its value and income. For prepaid savings plans, list each of the underlying investments chosen under the plan, the value, probably the EIF box, and a category of income.

Conflicts analysis:

Under 18 U.S.C. 208, an interest in a prepaid tuition plan will be the "ability or willingness" of the plan sponsor to honor its contractual obligation. An interest in a prepaid savings plan will be in each of the underlying funds, which will probably be exempt under 5 CFR 2640.201.

TIAA-CREF

Background:

- TIAA-CREF is a national financial services provider.
- They offer a wide range of products to the general public as well as operate a pension system for people employed in education and research in the United States.
- In 1998, TIAA-CREF began offering mutual funds to the public.
- TIAA-CREF now offers annuities, mutual funds, IRAs, Keogh plans, life insurance, trust services, and college savings programs.

Reporting requirements:

On Schedule A, for TIAA-CREF retirement participants, indicate TIAA-CREF retirement plan with a value and income and check EIF. In the future, assets of the retirement plan will be required to be broken out. For retail products, list each individual fund as would be required for any other mutual fund purchase with its value and income and the EIF: *

Conflicts analysis:

Analyze each fund under § 208 as you would a mutual fund. Exemptions at 5 CFR 2640 are available. ; ;